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4 IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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MATSUNOKI GROUP, INC., dba HAIKU  
8 HOUSES,

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Plaintiff,

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v.

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TIMBERWORK OREGON, INC.; TIMBERWORK,  
12 INC.; JOAN L. SHUELL; EARL MAURY  
BLONDHEIM; DON PAUL; ILENE ENGLISH-  
PAUL and DOES 1 through 10,  
13 inclusive,

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No. C 08-04078 CW

ORDER GRANTING  
DEFENDANT SHUELL'S  
MOTION TO DISMISS,  
DENYING DEFENDANT  
BLONDHEIM'S MOTION  
TO DISMISS, AND  
DENYING DEFENDANTS'  
ADMINISTRATIVE  
MOTION FOR LEAVE TO  
FILE A REPLY TO  
PLAINTIFF'S SURREPLY

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Defendants Joan L. Shuell and Earl Maury Blondheim filed a  
16 motion to dismiss for lack of personal jurisdiction. On December  
17 12, 2008 the Court issued an Order deferring its ruling on the  
18 motion to dismiss to allow the parties additional time to conduct  
19 jurisdictional discovery. Plaintiff Matsunoki Group, Inc., doing  
20 business as Haiku Houses, filed a supplemental brief in opposition  
21 to Defendants' motion. Defendants filed a supplemental brief in  
22 support of their motion to dismiss.<sup>1</sup> Having considered all of the  
23 papers filed by the parties, the Court DENIES Defendant Blondheim's  
24 motion to dismiss and GRANTS Defendant Shuell's motion to dismiss  
25 for lack of personal jurisdiction.

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<sup>1</sup>On March 18, 2009 the Court granted Plaintiff leave to file a  
27 surreply in support of its opposition to Defendants' motion to  
28 dismiss. Defendants move for leave to file a response to  
Plaintiff's surreply, which the Court denies as unnecessary.

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## BACKGROUND

2 Plaintiff produces and sells houses and house designs  
3 featuring architecture influenced by sixteenth century Japan.  
4 (Complaint ¶ 15.) Plaintiff is a Tennessee corporation with its  
5 principal place of business in that state. (Id. ¶ 5.)

6 On August 25, 2008, Plaintiff filed a complaint alleging that  
7 Defendants engaged in acts of copyright, trademark and trade dress  
8 infringement; false designation of origin; and unfair competition.  
9 (Id. ¶ 28-60.) An example of such an act was the construction of a  
10 house in Jenner, California based in whole or in substantial part  
11 on Plaintiff's copyrighted plans and drawings. (Id. ¶ 22.)  
12 Defendants Blondheim and Shuell reside in Oregon. (Id. ¶ 8-9.)  
13 Defendant Timberwork, Inc. is an Oregon corporation with its  
14 principal place of business in that state. (Id. ¶ 6-7.)  
15 Defendants Don Paul and Ilene English-Paul are individuals residing  
16 in California. (Id. ¶ 10-11.)

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## LEGAL STANDARD

18 Under Rule 12(b)(2) of the Federal Rules of Civil Procedure, a  
19 defendant may move to dismiss for lack of personal jurisdiction.  
20 The plaintiff then bears the burden of demonstrating that  
21 jurisdiction exists. Schwarzenegger v. Fred Martin Motor Co., 374  
22 F.3d 797, 800 (9th Cir. 2004). The plaintiff "need only  
23 demonstrate facts that if true would support jurisdiction over the  
24 defendant." Ballard v. Savage, 65 F.3d 1495, 1498 (9th Cir. 1995).  
25 Uncontroverted allegations in the complaint must be taken as true.  
26 AT&T v. Compagnie Bruxelles Lambert, 94 F.3d 586, 588 (9th Cir.  
27 1996). However, the court may not assume the truth of such

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1 allegations if they are contradicted by affidavit. Data Disc, Inc.  
2 v. Systems Technology Associates, Inc., 557 F.2d 1280, 1284 (9th  
3 Cir. 1977).

4 There are two independent limitations on a court's power to  
5 exercise personal jurisdiction over a non-resident defendant: the  
6 applicable state personal jurisdiction rule and constitutional  
7 principles of due process. Sher v. Johnson, 911 F.2d 1357, 1361  
8 (9th Cir. 1990). California's jurisdictional statute is co-  
9 extensive with federal due process requirements; therefore,  
10 jurisdictional inquiries under state law and federal due process  
11 standards merge into one analysis. Rano v. Sipa Press, Inc., 987  
12 F.2d 580, 587 (9th Cir. 1993).

13 The exercise of jurisdiction over a non-resident defendant  
14 violates the protections created by the due process clause unless  
15 the defendant has "minimum contacts" with the forum state so that  
16 the exercise of jurisdiction "does not offend traditional notions  
17 of fair play and substantial justice." International Shoe Co. v.  
18 Washington, 326 U.S. 310, 316 (1945).

19 Specific jurisdiction<sup>2</sup> exists when the cause of action arises  
20 out of or relates to the defendant's activities within the forum.  
21 Data Disc, Inc., 557 F.2d at 1286. Specific jurisdiction is  
22 analyzed using a three-prong test: (1) the non-resident defendant  
23 must purposefully direct its activities towards, or consummate some  
24 transaction with, the forum or a resident thereof, or perform some  
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26 <sup>2</sup>As stated in this Court's December 12, 2008, Order, the Court  
27 does not have general jurisdiction over Defendant Blondheim or  
Shuell.

1 act by which it purposefully avails itself of the privilege of  
2 conducting activities in the forum, thereby invoking the benefits  
3 and protections of its laws; (2) the claim must be one which arises  
4 out of or results from the defendant's forum-related activities;  
5 and (3) the exercise of jurisdiction must be reasonable. Lake v.  
6 Lake, 817 F.2d 1416, 1421 (9th Cir. 1987). Each of these  
7 conditions is required for asserting jurisdiction. Insurance Co.  
8 of N. Am. v. Marina Salina Cruz, 649 F.2d 1266, 1270 (9th Cir.  
9 1981).

10 A showing that a defendant "purposefully directed" its conduct  
11 toward a forum state generally is used in torts cases.  
12 Schwarzenegger, 374 F.3d at 802. This showing "usually consists of  
13 evidence of the defendant's actions outside the forum state that  
14 are directed at the forum, such as the distribution in the forum  
15 state of goods originating elsewhere." Id. at 803. Purposeful  
16 direction may be established under the "effects test" where the  
17 defendant (1) committed an intentional act, (2) expressly aimed at  
18 the forum state, (3) causing harm that the defendant knows is  
19 likely to be suffered in the forum state. Dole Food Co. v. Watts,  
20 303 F.3d 1104, 1111 (9th Cir. 2002).

21 A showing that a defendant "purposefully availed" itself of  
22 the privilege of doing business in a forum state typically consists  
23 of evidence of the defendant's actions in the forum and is  
24 generally used in contract cases. Schwarzenegger, 374 F.3d at 802.  
25 The requirement of purposeful availment ensures that the defendant  
26 should reasonably anticipate being haled into the forum state court  
27 based on its contacts. World-Wide Volkswagen Corp. v. Woodson, 444  
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1 U.S. 286, 297 (1980). The purposeful availment test is met where  
2 "the defendant has taken deliberate action within the forum state  
3 or if he has created continuing obligations to forum residents."  
4 Ballard, 65 F.3d at 1498.

5 The second factor requires that the claim arise out of or  
6 result from the defendant's forum-related activities. A claim  
7 arises out of a defendant's conduct if the claim would not have  
8 arisen "but for" the defendant's forum-related contacts.

9 Panavision Int'l v. L.P.v. Toeppa, 141 F.3d 1316, 1322 (9th Cir.  
10 1998).

11 Once the plaintiff has satisfied the first two factors, the  
12 defendant bears the burden of overcoming a presumption that  
13 jurisdiction is reasonable by presenting a compelling case that  
14 specific jurisdiction would be unreasonable. Burger King Corp. v.  
15 Rudzewicz, 471 U.S. 462, 477 (1985); Haisten v. Grass Valley  
16 Medical Fund, Ltd., 784 F.2d 1392, 1397 (9th Cir. 1986). Seven  
17 factors are considered in assessing whether the exercise of  
18 jurisdiction over a non-resident defendant is reasonable: (1) the  
19 extent of the defendant's purposeful interjection into the forum  
20 state's affairs, (2) the burden on the defendant of defending in  
21 the forum, (3) conflicts of law between the forum state and the  
22 defendant's home jurisdiction, (4) the forum state's interest in  
23 adjudicating the dispute, (5) the most efficient judicial  
24 resolution of the dispute, (6) the plaintiff's interest in  
25 convenient and effective relief, and (7) the existence of an  
26 alternative forum. Caruth v. International Psychoanalytical Ass'n,  
27 59 F.3d 126, 128 (9th Cir. 1995).

## DISCUSSION

An employee's contacts with a forum are not to be judged according to the employer's activities there; rather, each defendant's contacts with the forum state must be assessed individually. Calder v. Jones, 465 U.S. 783, 790 (1984); Davis v. Metro Productions, Inc., 885 F.2d 515, 521 (9th Cir. 1989).

In its supplemental brief, Plaintiff argues that, because Timberwork consented to personal jurisdiction in California, Timberwork employees, Defendants Blondheim and Shuell, are also subject to personal jurisdiction if they are a "moving, active, conscious force" behind Timberwork's infringing activity committed in California. Alternatively, Plaintiff argues that this Court may exercise personal jurisdiction over Defendants Shuell and Blondheim under an agent or alter ego theory.

Defendants rely on the fiduciary shield doctrine. Without citing any authority, they argue that Plaintiff must show that they acted outside of and independently from their roles as Timberwork employees to overcome the fiduciary shield doctrine.

Under the fiduciary shield doctrine, a person's mere association with a corporation that causes injury in the forum state is not sufficient in itself to permit the forum to assert jurisdiction over the person. Davis, 885 F.2d at 520. "Because the corporate form serves as a shield for the individuals involved for purposes of liability as well as jurisdiction, many courts search for reasons to 'pierce the corporate veil' in jurisdictional contexts parallel to those used in liability contexts." Id. The employee's contacts must give rise to some identifiable theory of

1 liability pursuant to which his or her contacts on behalf of the  
2 corporate employer may justifiably be imputed to the employee.  
3 Click v. Dorman Long Technology, Ltd., 2006 WL 2644889, \*4 (N.D.  
4 Cal.). This requirement is fulfilled where a plaintiff shows that  
5 a corporate employee is the moving, active, conscious force behind  
6 the infringing activity, Babbit Electronics, Inc. v. Dynascan  
7 Corp., 828 F. Supp. 944, 960 (S.D. Fla. 1993), aff'd, 38 F.3d 1161,  
8 1184 (11th Cir. 1994); Silverlit Toys Manufactory, Ltd. v. Absolute  
9 Toy Marketing, Inc., 2007 WL 521239, \*8 (N.D. Cal.) (applying  
10 Babbit Electronics), or where the corporation is the alter ego of  
11 the individual defendant, Flynt Distributing Co., Inc. v. Harvey,  
12 734 F.2d 1389, 1393 (9th Cir. 1984).

13 A plaintiff may show that a corporate employee is the moving,  
14 active, conscious force behind the infringing activity by  
15 demonstrating that the corporate officer directs, controls,  
16 ratifies, or participates in the infringing activity, Babbit  
17 Electronics, 38 F.3d at 1184, or acts as the "guiding spirit and  
18 the active directing hand in full charge of [the corporation's]  
19 operations," International Mfg. Co. v. Landon, Inc., 336 F.2d 723,  
20 728 (9th Cir. 1964). Personal liability for such infringement is  
21 appropriate without regard to piercing of the corporate veil.  
22 Babbit Electronics, 38 F.3d at 1184.

23 In Silverlit, a case involving the sale of allegedly  
24 infringing products in California, the court denied a motion to  
25 dismiss the claims against the president and owner of the  
26 corporation, and a manager, for lack of personal jurisdiction.  
27 2007 WL 2644889 at \*8. Having conceded that the corporation was  
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1 subject to specific jurisdiction in California, the defendants  
2 argued that the court lacked personal jurisdiction over the  
3 corporate employees because they did not individually have  
4 sufficient minimum contacts with California. Id. The court found  
5 that, because the president and owner knowingly made misleading  
6 statements, he was a moving, active force behind the alleged  
7 infringement and could be held personally liable; and that the  
8 manager could be held personally liable because the plaintiffs'  
9 evidence demonstrated that he was "capable of exercising sufficient  
10 control to subject him to jurisdiction." Silverlit, 2007 WL  
11 2644889 at \*9.

12 Alternatively, to justify disregarding the corporate veil  
13 under the alter ego doctrine, the plaintiff must show a unity of  
14 interest and ownership such that separate personalities of  
15 corporation and individuals do not exist and that it would be  
16 unjust to shield the defendants behind the corporate veil. Flynt  
17 Distributing Co., 734 F.2d at 1393.

18 I. Defendant Blondheim

19 Defendant Blondheim is the founding president and owner of  
20 Timberwork. He argues that Silverlit is distinguishable because  
21 there the president and owner admitted that he "knowingly"  
22 contributed to the advertisement of an infringing product, but here  
23 Timberwork does not advertise or market its products. Defendant  
24 Blondheim's argument is not persuasive, however, because he admits  
25 that his job responsibilities include marketing. Defendant  
26 Blondheim's Interrogatory, Exhibit A, No. 3.

27 Furthermore, Defendant Blondheim seems to enjoy significant if  
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1 not complete control over decisions made on behalf of Timberwork.  
2 In addition to marketing, his duties include sales, and purchasing.  
3 Defendant Blondheim's Interrogatory, Exhibit A, No. 3. Defendant  
4 Blondheim has never had more than two employees working for him.  
5 He admits to having final approval on every decision pertaining to  
6 the operation of Timberwork and that, with the exception of  
7 invoicing, he was the only person from Timberwork who was involved  
8 in working with the Paul Defendants on their home in California.  
9 Further, he does not dispute that he personally sold materials to  
10 companies and individuals in California and built several  
11 residences in California including the one at issue in this action.  
12 Dec. of Charla Honea, filed November 1, 2008 ¶ 2.

13 The Court, therefore, finds that Plaintiff has submitted  
14 sufficient evidence to establish that Defendant Blondheim is a  
15 moving, active, conscious force behind the alleged infringing  
16 activity in California and is therefore subject to personal  
17 jurisdiction in this forum.

18 II. Defendant Shuell

19 Plaintiff argues that Defendant Shuell's actions are  
20 intertwined with Defendant Blondheim's because she is Defendant  
21 Timberwork's sole employee. (Declaration of Charla Honea, filed  
22 November 1, 2008 ¶ 4). However, as discussed above, Defendant  
23 Shuell's mere employment by a corporation that allegedly caused  
24 injury in California does not make her subject to personal  
25 jurisdiction in California. Nor does Defendant Shuell's  
26 administration of Timberwork's website, invoicing Timberwork's  
27 clients or association with Defendant Blondheim subject her to

1 jurisdiction in California. While Plaintiff has shown that  
2 Defendant Blondheim has final approval for every decision involving  
3 Timberwork and is responsible for marketing, Plaintiff's evidence  
4 that Defendant Shuell authorized California residents to act as  
5 agents of Timberwork and sent California residents color samples  
6 for tile roofs is insufficient to demonstrate that Defendant Shuell  
7 is the moving, active, conscious force behind Timberwork's  
8 infringing activity in California.

9 Nor has Plaintiff made a *prima facie* showing that there is  
10 such unity of interest and ownership between Timberwork and  
11 Defendant Shuell that she is its *alter ego* or that a failure to  
12 disregard the corporate veil would result in fraud or injustice.  
13 The Court therefore declines to exercise personal jurisdiction over  
14 Defendant Shuell.

15 CONCLUSION

16 For the foregoing reasons, the Court GRANTS the motion (Docket  
17 No. 15 in Case No. 08-4078) to dismiss all claims against Defendant  
18 Shuell for lack of personal jurisdiction, DENIES the motion to  
19 dismiss the claims against Defendant Blondheim, and DENIES  
20 Defendants' administrative motion for leave to file a reply to  
21 Plaintiff's surreply.

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23 IT IS SO ORDERED.

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25 Dated: 4/16/09



26 CLAUDIA WILKEN  
United States District Judge

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